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| APPLICATION NO.                                                                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/429,939                                                                     | 10/29/1999  | MICHEL AUTHIER       |                     | 6547             |
| 7590                                                                           | 04/05/2005  |                      | EXAMINER            |                  |
| JOHN R ROSS III<br>ROSS PATENT LAW OFFICE<br>P O BOX 2138<br>DEL MAR, CA 92014 |             |                      | FETSUGA, ROBERT M   |                  |
|                                                                                |             |                      | ART UNIT            | PAPER NUMBER     |
|                                                                                |             |                      | 3751                |                  |
| DATE MAILED: 04/05/2005                                                        |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                 |                |
|------------------------------|-----------------|----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)   |
|                              | 09/429,939      | AUTHIER ET AL. |
| Examiner                     | Art Unit        |                |
| Robert M. Fetsuga            | 3751            |                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 January 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 26-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                             |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                        | 6) <input type="checkbox"/> Other: _____                                    |

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "means" language set forth in claim 38 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 26, 32 and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bajka.

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The Bajka reference discloses a freeze control system comprising: a tub 21 including water (col. 4 lns. 47-58); piping 24; a heating element 42; a pump 28; an ambient air temperature/second sensor 66; a computer 26; an air blower 30; and a first sensor 70, as claimed.

4. Claims 27-29 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajka.

As illustrated in Fig. 1 of Bajka, the ambient sensor 66 is positioned relative to the computer 26 in a similar manner as that illustrated by applicant. In any event, the ambient sensor includes a calibration feature (col. 9 lns. 22-35) which would meet the claimed subject matter.

5. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajka and Tompkins et al. '720.

Although the computer of the Bajka freeze control system does not include time intervals, as claimed, attention is directed to the Tompkins et al. '720 ('720) reference which discloses an analogous freeze control system which further includes a computer 12,14 having time intervals (col. 8 lns. 25-32). Therefore, in consideration of '720, it would have been obvious to one of ordinary skill in the freeze control system art to associate time intervals with the Bajka computer in order

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to allow effective user control. Re claim 31, the choice of interval length would appear an obvious choice to be made.

6. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajka, '720 and Dundas.

Dundas teaches it is common to operate a blower 19 during freezing conditions (col. 4 lns. 22-25). To automate the blower operation of Dundas with the computer taught by Bajka would have been obvious in order to enhance freeze protection.

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

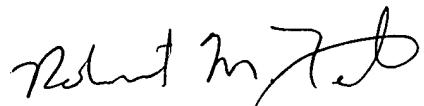
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

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expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751